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Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In the Matter of) GEN Docket No. 90-314
) ET Docket No. 92-100
)
) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
 Amendment of the Commission's) RM-7860, RM-7977, RM-7978,
 Rules to Establish New Personal) RM-7979, RM-7980
 Communications Services)

To: The Commission

REPLY COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("Roseville") hereby submits its reply comments in response to the Commission's Notice of Proposed Rulemaking In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 92-333, (the "Notice").

I. INTRODUCTION

In this proceeding, the Commission seeks to optimize and balance four goals in providing a regulatory structure to PCS: universality, speed of deployment, diversity of services and competitive delivery. In its initial comments in this proceeding, Roseville noted that local exchange carriers ("LECs") and cellular telephone carriers are particularly qualified to provide PCS, and that provision of PCS by these carriers will advance the four goals stated by the Commission. Roseville also suggested that small service areas would be most appropriate for PCS, and proposed that the Commission adopt the 734 MSA and RSA cellular

telephone service areas for PCS service as well. Lastly, Roseville suggested that comparative hearings would be the best method for licensing PCS providers, with lotteries the next best alternative if the Commission decided against comparative consideration. A review of the comments filed by other parties demonstrates substantial support for these positions.

II. ELIGIBILITY REQUIREMENTS

A. Local Exchange Carriers

Roseville is encouraged by the Commission's recognition of the importance of allowing LECs to provide PCS in their wireline service areas. Notice at paras. 72-75. In its comments, Roseville demonstrated that LECs are well qualified to provide the high quality communications services to consumers envisioned by the Commission in a timely manner; that LECs already have the network in place and years of technical experience in such essential matters as network planning, construction, interconnection, customer service and billing; that LEC provision of PCS will promote efficient use of the imbedded wireline network and interconnection with the public switched network; that provision of PCS by LECs will allow LECs to use advanced technologies to further the goal of universal service, especially in rural and small town areas; and that LEC provision of PCS would promote competition in the PCS market. Roseville Comments at pages 3-6. Roseville suggested that the public interest would be well served if the Commission set aside one PCS license in each service area for use by LECs. Id. at page 6.

Numerous commenters support the Commission's proposal to allow LECs to provide PCS in their wireline service area. While LEC commenters and associations representing LECs would be expected to support this proposal, as described below, that proposal also received substantial support from regulatory agencies as well as the Commission's Office of Plans and Policy ("OPP").

The paper "Putting It All Together: The Cost Structure of Personal Communications Services" (the "OPP Paper") concludes that there are substantial economies of scope in the provision of PCS over LEC networks. OPP Paper at page 43. Specifically, as Roseville noted in its initial comments, LECs could use their existing networks to provide billing, administrative and maintenance services, as well as signalling and switching. OPP Paper at page 29.¹ As a result, consumers would gain substantial benefits if LECs are allowed to offer PCS on an integrated basis with basic wireline service. OPP Paper at page 56. Accordingly, the Paper concludes that subject to certain safeguards already proposed by the Commission,² LECs should be

¹ Furthermore, as Roseville also noted in its comments, the OPP Paper concludes that LEC provision of PCS would promote the development of efficient interconnection and other advances in infrastructure required to support PCS. OPP Paper at page 60.

² The Commission proposed to require LECs to file a non-structural safeguard plan to prevent discriminatory interconnection and cross-subsidation. Notice at page 31, note 51.

allowed to hold licenses to provide PCS in their wireline service area. OPP Paper at page 60.³

Other major regulatory agencies also supported LEC provision of PCS in their wireline service areas. The Illinois Commerce Commission ("ICC") argued that based on the economies of scope identified in the Notice, LECs should not be excluded as long as nondiscriminatory interconnection access policies are developed. ICC Comments at pages 9-10. The New York Department of Public Service ("NYDPS") suggested that LECs should be allowed to use PCS to provide improved basic telephone service. NYDPS Comments at page 9.⁴ And while NYDPS generally opposed set-asides, it stated that set-asides for LECs would be appropriate because the provision of PCS by LECs would reduce service costs and improve service quality for their wireline customers. NYDPS Comments at page 10. Lastly, the National Telecommunications and Information

³ The OPP Paper recommends that LECs with cellular holdings should be subject to the same restrictions as those placed on other cellular operators. OPP Paper at page 60. These restrictions are discussed more fully below, but it should be noted that the OPP Paper supports the provision of spectrum allocated for PCS to cellular operators for use to provide PCS in their cellular service areas where it is shown that the 25 MHz already allocated to those operators for cellular use is insufficient to provide both cellular and PCS services. OPP Paper at 57-58. As shown below, there is substantial evidence that 25 MHz is not sufficient to provide both PCS and cellular service.

⁴ Like OPP, NYDPS suggested that where a PCS applicant already holds local radio spectrum through an affiliate, it should be barred from acquiring spectrum allocated for PCS. However, NYDPS recognized that if cellular licensees, including LECs, are unable to use their existing spectrum to provide PCS, they should not be precluded from applying for PCS licenses within their existing service areas. NYDPS Comments at page 9. As shown below, there is substantial evidence that cellular operators could not provide both cellular and PCS services with the 25 MHz allocated for cellular service.

Administration ("NTIA") also supported LEC eligibility, subject to limitations based on cellular affiliations.⁵ NTIA Comments at 31.

While some commenters opposed LEC provision of PCS in their wireline service area, many of these commenters are parties whose point of view are in part skewed by their current or anticipated future competition with LECs in the provision of telecommunications services. For example, it is no surprise that cable television MSOs should oppose LEC provision of PCS. Their opposition must be viewed in context of their own self interests, however.

The objections to LEC provision of PCS generally include the following arguments. First, objectors assert that LECs are in a position to automatically dominate the PCS market if they are allowed in. No evidence is provided for this assertion, and in fact, there is none.⁶ Second, asserting that LECs control the "bottleneck" in local exchange loops, objectors such as MCI⁷

⁵ NTIA recommended that any bars on provision of PCS by cellular operators in their cellular service area be reviewed in three years. NTIA Comments at pages 27-28.

⁶ Indeed, the OPP Paper states that "it is highly unlikely that one or two firms would dominate the market due to any cost characteristics of the market." OPP Paper at page 56. Furthermore, OPP, like the vast majority of the commenters, supports a larger number (up to six) of licensees per market (OPP Paper at pages 51-53), and a larger number of licensees (assuming that each has a sufficient amount of spectrum) should improve competition. See Comments of the Department of Justice ("DOJ") at pages 14-15.

⁷ Comments of MCI at pages 25-27. While interconnection with the public switched network is an important topic in MCI's comments, "equal access" for interexchange carriers seems to be the barely concealed motive behind MCI's ambitious "national consortium" licensing plan. While such (Note continues.....)

fear that LECs will discriminate against PCS competitors in interconnection and/or will cross-subsidize their PCS services with funds from wireline services. These are well-worn arguments which, while superficially attractive, simply have no substantial merit. The Commission has already proposed requiring LECs to adopt non-structural safeguards against discrimination and cross-subsidization as a condition for providing PCS in their wireline service areas. Notice at notes 51 and 54. Moreover, all PCS providers would have a federally protected right of interconnection with the public switched network. Notice at paras. 99 and 102. These proposals will adequately prevent any perceived LEC anti-competitive behavior.

B. Cellular Telephone Carriers

In the Notice, the Commission recognized that the efficiencies of allowing incumbent cellular carriers to provide PCS should reduce expenses and lower costs for customers (para. 66), but it was concerned that allowing cellular licensees to acquire licenses to provide PCS in their cellular service areas

consortiums would have "independent local operators," the national coordinator would not only designate service areas and build and operate the infrastructure, but it would be responsible for managing access to interexchange carriers. MCI Comments at pages 9-10. However, in light of the limited role for "local operators," this proposal reduces the Commission's vision of a large number of competitive local providers (Notice at paras. 34 and 59) to three national mega-licensees. Part of the reason for having numerous providers was to allow for the development of diverse services. Notice at para. 59. This seems less likely in the "franchise" environment proposed by MCI. By way of contrast, Sprint, another interexchange carrier, not only recommends smaller service areas over national ones (Comments at pages 3-9), it proposes that incumbent cellular carriers and LECs with minor cellular market interests be eligible for PCS licenses. Comments of Sprint at pages 11-13.

might unacceptably reduce competition in this new service (para. 64). In response to the Commission's concerns regarding competition, Roseville noted that while there is a potential similarity between PCS and cellular services, there will be substantial differences between these two services that will preclude the destructive competition anticipated by the Commission: PCS systems are expected to be configured differently than and will target a different category of users (pedestrians) than that targeted by cellular providers (users in automobiles). Furthermore, other parts of the regulatory regime will promote substantial competition, especially if license areas are kept small and the Commission authorizes a larger number (that is 5, rather than 3) of PCS providers per service area. Lastly, Roseville noted that the Commission's proposal to allow cellular carriers to provide PCS in their cellular service areas, but only on their frequencies already allocated for cellular service, was inadequate: cellular carriers need their current spectrum for existing and growing cellular use, and there is no evidence that PCS will reduce the demand for traditional cellular service, since the two services target different types of users and are likely to create different customer perceptions, and since there are numerous different PCS proposals involving voice, data and position determination. In addition, PCS may increase demand for cellular, since new customers will be introduced to the benefits of mobile communications.

Roseville also noted that while there is no reason to exclude cellular carriers from providing PCS, there are

substantial reasons to allow their participation. Roseville noted that in addition to the obvious economies of scope, cellular carriers are particularly qualified to provide high quality mobile services in their service areas, since they have experience in overcoming the problems caused by geography and terrain in their specific areas. And because they already have vast mobile communications networks in place, they are well positioned to provide rapid implementation of PCS.⁸

Numerous commenters recognized the potential benefits to consumers of allowing cellular carriers to provide PCS in their cellular service areas. For example, the OPP Paper recognizes that there are substantial economies of scope to be realized in cellular provision of PCS, and that these economies would benefit consumers (OPP Paper at page 56). The Paper also concludes that it is unlikely that one or two companies (cellular or otherwise) could dominate a local PCS market. Id. The NYDPS argues that since PCS may enhance the services that cellular carriers offer to the public, such carriers should not be prohibited from offering PCS solely because of their status as an incumbent carrier. NYDPS adds a qualification, however, that is common among many commenters. It states that where a PCS applicant or

⁸ Roseville also noted that while the Commission should not bar cellular companies from obtaining PCS licenses in their cellular service area, if the Commission does enact such a rule, it should not bar LECs which have minority limited partnership interests in cellular carriers from obtaining PCS licenses. Such interests give the LEC no operational control over the provision of cellular services. Compare with the Comments of Sprint, which recommend that companies (including LECs) with less than 30 percent equity interest in a local cellular carrier be allowed to apply for a local PCS license. Comments of Sprint at pages 10-13.

its affiliate holds a license in the same area for a different radio service (such as cellular), it must demonstrate the need for additional spectrum allocated for PCS, before it can be eligible to receive a PCS license.⁹ NYDPS Comments at page 9. This issue, that is whether it would be wasteful to assign PCS licenses to cellular carriers when they may be able to provide both cellular and PCS services with their existing cellular authorizations, seems to be key to the Commission's concerns as well.

The simple answer is that it is not wasteful to assign spectrum to cellular carriers specifically for PCS because, due to technical limitations and large current use and projected growth of traditional cellular traffic, many cellular carriers currently do not have, or will soon not have, sufficient spectrum to provide both cellular service and the wide variety of services that are currently put in the category of PCS. As demonstrated by the Cellular Telecommunications Industry Association ("CTIA"), approximately 7.5 MHz of the cellular allocation will be required through the foreseeable future to service analog users. CTIA Comments at page 66 and Appendix B. 11.5 MHz of the cellular allocation is required to provide digital voice services. Id. The remaining spectrum is clearly not sufficient to provide the services anticipated by the Commission for PCS.

⁹ Similarly, while the OPP Paper generally concludes that the 25 MHz allocated to cellular operators should be enough to provide both PCS and cellular services, it recognizes that additional spectrum may in fact be needed, especially if economies of scope, with resulting consumer benefits, are to be fully achieved. OPP Paper at pages 57-58.

III. CONCLUSION

There is substantial support in the Comments filed in this proceeding for the proposition that consumers will benefit from the economies of scope that will result from provision of PCS by LECs and incumbent cellular carriers in their existing service areas. These carriers are also particularly qualified, due to their experience and network resources, to provide high quality services to the public. Lastly, the regulatory regime proposed by the Commission will prevent any potential anti-competitive behavior. Provision of PCS by LECs and cellular carriers will advance the Commission's four goals of universality, speed of deployment, diversity of services and competitive delivery. Accordingly, the Commission should allow LECs and cellular carriers to obtain licenses to provide PCS in their respective service areas, as well as outside of those areas.

Respectfully submitted,

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